



2007 Assembly Bill 517
Eliminating Racial Considerations in the Open Enrollment Program
Testimony of Representative Steve Nass, Author
November 13, 2007

In June 2007, the U.S. Supreme Court issued a ruling prohibiting the use of race as a primary component of any K-12 school diversity plans and in assigning children to schools. The ruling was a result of cases involving diversity programs from school districts in Louisville, Kentucky and Seattle, Washington. In Wisconsin, the ruling has implications for the Wisconsin Open Enrollment Program and the Chapter 220 Program.

The Chapter 220 program offers financial incentives for schools that increase racial diversity by accepting students from other schools in and out of their districts, and prevents schools in the program from accepting out-of-district transfers that decrease racial diversity. The Chapter 220 Program primarily affects Milwaukee and its surrounding suburban school districts. Other participating districts include Beloit, Racine, Wausau and Madison.

The Wisconsin Open Enrollment Program allows parents to apply for spots in other public school districts, if space is available. The statutes provide for the application procedures and other conditions for participation in this program. The Open Enrollment Program is available to families statewide.

In the 2006-07 school year, slightly more than 23,000 students participated in the Open Enrollment Program statewide. In that same year, Madison took in 150 students from other school districts and 232 Madison children left for other public school districts under the program.

Under the current Wisconsin Open Enrollment Law, those school districts participating in the Chapter 220 Program must reject open enrollment applications if a district believes that approving the applications would harm racial diversity criteria. Each school district in the Chapter 220 Program

must establish its own set of criteria for making those decisions on Open Enrollment applications.

In recent years, this has generally not been a problem for most districts in the Chapter 220 program. However, the Madison School District has repeatedly rejected applications under the racial diversity language in the current law. In fact, the **Wisconsin State Journal** determined that the Madison School District had rejected 126 Open Enrollment applications this year from families in Madison wanting to send their children to other public school districts.

The **Wisconsin State Journal** also uncovered the fact that the Madison School District is the only district that still rejects Open Enrollment applications based on racial considerations. Included with my testimony are several articles on this subject from the **Wisconsin State Journal**. The articles also discuss the impact of the Madison School District's actions on real families. In particular, the articles explain the impact on the Cizek family of Madison and their rejected application. In the end this family was forced to file a lawsuit earlier this year, but the case was settled out of court after the U.S. Supreme Court ruling. This family was finally permitted to send their daughter to a neighboring school district in which the mother was employed as a teacher.

Assembly Bill 517 is a simple bill that brings Wisconsin's Open Enrollment Law into compliance with the U.S. Supreme Court ruling from June 2007. The bill eliminates the requirement that Chapter 220 school districts must reject applications based on racial considerations. The bill is also a reflection of reality since all Chapter 220 school districts, except the Madison School District, had stopped rejecting Open Enrollment applications based on race even before the U.S. Supreme Court ruling.

I would also like to notify the committee members that Legislative Council has found some technical drafting issues that need to be addressed. Based on the input of Joyce Kiel, committee attorney, I am having a substitute amendment drafted to reflect these technical changes.

I hope the committee will support this necessary clean-up of state statutes.

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What It Means Is Hazy, For Now

**But Rainwater Says Supreme Court Ruling Will Directly Affect
Madison School-assignment Policies.**

Impact In Wisconsin

Wisconsin State Journal :: FRONT :: A8

Friday, June 29, 2007

By ANDY HALL ahall@madison.com 608-252-6136

Wisconsin educators say a U.S. Supreme Court decision that restricts the use of race in assigning children to schools may force changes in state open-enrollment and school-integration programs, but it's also still possible the programs could continue without major changes. "Until our legal counsel has an opportunity to review the Supreme Court ruling it's really premature to draw any conclusions on its effect on any of these programs in Wisconsin," said Patrick Gasper, spokesman for Wisconsin Superintendent of Public Instruction Libby Burmaster.

Art Rainwater, superintendent of Madison's public schools, said none of the district's school-assignment policies would be directly affected by Thursday's decision, because the district relies upon criteria other than race - particularly poverty - when drawing school boundaries. And it uses poverty and concentrations of special-education students and students with limited English proficiency when staffing the schools.

"In general, we don't do anything based on race in our district," Rainwater said.

The state open-enrollment program allows students to transfer to other school districts under certain conditions.

In the 2006-07 school year, 23,407 students participated in open enrollment statewide. Madison, the state's second-largest district, took in 150 students and lost 232 to other districts.

The state integration program, known as Chapter 220, supports districts' pursuit of racial diversity by boosting aid for students who switch schools or districts. District participation is voluntary.

The \$84.8 million program includes thousands of students, primarily in Milwaukee and its suburbs, state records show. Other participating districts are Beloit, Racine, Wausau and Madison.

Included in Madison are 860 elementary students living in areas covered by a 1980s agreement with federal civil-rights officials. Under that deal, to promote integration, the Lincoln and Midvale schools were paired,

Franklin and Randall were paired, and students living in portions of Madison's South Side were assigned to Glendale and Allis schools.

Rainwater said because Madison's Chapter 220 program covers all children within areas of the community, and doesn't specify school assignments based on race, he believes the program will remain unscathed by the court ruling.

In the Milwaukee area, though, Chapter 220 for the past three decades has allowed minority students in the city to attend suburban schools while permitting white students in the suburbs to attend city schools. Students are also allowed to transfer within the district.

State law requires districts to reject open-enrollment requests if they would harm the racial balance of schools participating in the Chapter 220 program.

School boards set the criteria for each of the state's districts. In Madison, the district rejects applications if the transfer would push a school's minority enrollment above - or below - the district's average minority enrollment, which is about 43 percent, Rainwater said.

"We just follow the law," he said.

Phil Harris, a spokesman for Milwaukee Public Schools, said at first glance, it appears the court ruling will affect Milwaukee's Chapter 220 program, but lawyers will review it to be sure.

"The ruling was regarding any sort of race-based assignment of schools and race is involved in the Chapter 220 program," Harris said.

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Parents Ask Court For Change Of School

They Want Their Daughter To Attend Kindergarten Near The School Where Mom Is A Teacher.

Wisconsin State Journal :: LOCAL :: B1

Saturday, July 28, 2007

By ANDY HALL ahall@madison.com 608-252-6136

Madison resident Allison Cizek, 5, is about to enter kindergarten, but a recent U.S. Supreme Court ruling that restricts the use of race in assigning children to schools may influence which school district she attends.

Allison's parents, Jeff and Jennifer Cizek, filed a petition in Dane County Circuit Court on Thursday seeking an immediate court order that would allow her to attend Taylor Prairie School in the Monona Grove School District this fall.

"I wouldn't be spending money on this if it wasn't important to me," Jeff Cizek said Friday evening.

"The color of a person's skin doesn't matter. They should all be treated the same."

The family's attempts to transfer Allison from Madison to Monona Grove have been rejected by Madison School District officials who ruled that because she is white, her departure would increase racial imbalance in her Madison school.

Allison's family lives on Madison's Southwest Side in the 2800 block of Muir Field Road. The home is in the Madison School District's Huegel Elementary attendance area.

But her mother teaches in the Monona Grove School District, and last year Allison attended a pre-kindergarten program in that district east of Madison.

Many of Allison's friends will enroll at Taylor Prairie School, near where Allison's mother works, and there'd be no need to pay for after-school day care if Allison attended school in Monona Grove, the family contends.

Jeff Cizek said the family plans to sell its home to move to the Monona Grove district, to be closer to Jennifer Cizek's place of employment. He owns a painting company that operates throughout the area.

Under Wisconsin's open enrollment program, which permits families to

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choose where their children attend school, the Cizek family applied for permission for Allison to switch from Madison to the Monona Grove district.

Monona Grove said yes.

But Madison said no, invoking the district's policy, which says that because the district participates in Wisconsin's Chapter 220 integration program, the district is forbidden from approving student transfers that would increase racial imbalance in the district.

The policy says transfers may not increase the concentration of minority students in schools - such as Huegel - where the minority enrollment already exceeds the district average of 43 percent.

The family appealed the district's decision, but it was upheld by the Wisconsin Department of Public Instruction.

On the next day, June 28, however, the U.S. Supreme Court issued its ruling, which is forcing school districts across the country to examine their school-assignment policies.

The family's court petition seeks a fresh review of Allison's case, in light of the U.S. Supreme Court decision.

Art Rainwater, Madison schools superintendent, said Friday that he hadn't heard of any other local court challenges invoking the recent U.S. Supreme Court ruling. He hadn't seen the Cizeks' petition.

"And we do not comment on ongoing litigation," Rainwater said.

It remains too early, Rainwater said, to see how DPI and state courts will interpret the Supreme Court ruling.

"That will all play out," he said.

None of the district's internal school-assignment policies likely will be affected by the ruling, Rainwater has said, because they rely upon criteria such as poverty, rather than race, when drawing school boundaries.

In the 2006-07 school year, 23,407 students participated in open enrollment statewide. Madison, the state's second-largest district, took in 150 students and lost 232 to other districts.

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School Transfer Is Approved For White Girl

Wisconsin State Journal :: LOCAL :: B1

Thursday, August 23, 2007

By ANDY HALL ahall@madison.com 608-252-6136

Madison resident Allison Cizek, 5, earlier denied permission to transfer to another school district because she is white, will be allowed to leave under an offer extended late Wednesday by state officials.

Allison's mother, Jennifer Cizek, cried with happiness after learning that the family had prevailed in its court battle with the Madison School District and Wisconsin Department of Public Instruction over an integration law enforcement.

"It's like a huge weight lifted off of our shoulders," said Allison's father, Jeff Cizek, who estimated that the legal costs will top \$4,000 for overturning earlier decisions by Madison and DPI officials.

Allison, a shy girl who was never told she was at the center of a legal dispute, now will be allowed to enter kindergarten where she'd planned to go all along - Monona Grove, where her mother is an elementary teacher. There'll now be no need to pay for after-school day care for Allison.

The family's home on Madison's Southwest Side in the 2800 block of Muir Field Road remains for sale because the Cizeks plan to move to the district to be closer to the mother's workplace.

Under Wisconsin's open enrollment program, which permits families to choose where their children attend school, the Cizek family applied for permission for Allison to switch from Madison to the Monona Grove district.

Monona Grove said yes.

But Madison said no, invoking the district's policy, which says that because the district participates in Wisconsin's Chapter 220 integration program, the district is forbidden from approving student transfers that would increase racial imbalance in the district.

The family lives in Madison's Huegel Elementary attendance area. The district's internal policy, in an attempt to comply with the law governing the Chapter 220 program, forbids white students from transferring out of school attendance areas - such as Huegel's - in which the minority student enrollment levels already exceed the district's average of 43 percent.

In July, Jeff and Jennifer Cizek filed a petition in Dane County Circuit Court seeking an immediate court order that would allow her to attend Monona Grove's Taylor Prairie School this fall. A hearing was scheduled for Monday before Judge Angela Bartell.

The family's court petition, filed by Madison lawyer Daniel Krause, sought a fresh review of Allison's case, in light of a June 28 U.S. Supreme Court decision that sharply limited the power of school districts to use race in determining school assignments.

Under a plan proposed Wednesday by Bruce Olsen, a state Department of Justice lawyer representing the DPI, the DPI would agree to reverse its earlier decision that backed Madison school official's denial of Allison's transfer request.

The agreement doesn't specify why the state is reversing course, and officials with DOJ and DPI declined to discuss the case.

"Any agreement that the Department of Justice reached was with our concurrence," DPI spokesman John Johnson said.

While declining to speculate on whether Wednesday's developments signal a change in policy to comply with the Supreme Court ruling, Johnson added that "it's likely that the Legislature will be reviewing this with Justice Department input and looking into changes in the law."

For the 2007-08 school year, the Madison School District cited the Chapter 220 racial-imbalance policy in denying the applications of 140 students attempting to transfer out of the district. The applications of 12 students were denied for other reasons. The district received 135 applications to transfer in. Five were denied, but none was due to racial imbalance, DPI figures show.

For school districts, the financial impact of open-enrollment transfers can be substantial. Districts will receive an estimated \$6,043 for each student they gain through open enrollment in the coming school year, while districts losing those students lose a similar amount of money.

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Open enrollment closed to white Madison students

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ANDY HALL
608-252-6136
September 7, 2007

If he lived anywhere else in Wisconsin, Zachary Walton, 12, wouldn't have this problem.

If he were black, Asian, Hispanic, or American Indian, Zachary wouldn't have this problem, either.

But he's in Madison, where growing numbers of white students are discovering that because of their race, the state's open enrollment program actually is closed.

"I feel like I'm left out," said Zachary, who wants to attend a public online school — one like his big brother Daniel, 15, enjoys.

Last week, when most students across Wisconsin began a new school year, Zachary began his second year of home schooling in his family's East Side apartment.

Madison officials, supported by the state Department of Public Instruction, have ruled that Zachary and 125 other students living in the district must stay put this year in the name of racial integration.

The policy is enforced even for dozens of students, such as Zachary, who don't attend public school but instead go to private schools or receive home schooling.

Laura and Mike Starks, Zachary's mother and stepfather, believe that Madison and DPI are going overboard. And that it's depriving Zachary of one-on-one attention needed for him to catch up academically.

"If we had the money, we would have aggressively fought this," Mike Starks said.

Madison is the only of Wisconsin's 426 school systems that still uses racial criteria to reject the applications of some students, such as Zachary, to transfer to other districts in the open enrollment program, according to a Wisconsin State Journal review of state Department of Public Instruction records.

Open enrollment, which is used by about 2 percent of Wisconsin students, is designed to let families choose where students attend school.

Like Zachary, Daniel is white. However, his transfer to iQ Academies in

the Waukesha School District was approved two years ago, when the family lived in the Montello School District, 60 miles north of Madison.

In its decisions for the current school year, Madison school officials cited concerns over increasing the district's "racial imbalance" in rejecting 140 transfer requests involving 126 students. The number of applications is larger than the number of students because some filed more than one request.

All of the students involved in those rejected transfer requests were white.

The number of race-based rejections represented a 71-percent increase in the number issued the previous year, according to data supplied by the district in response to requests from the State Journal.

"The state law requires the Madison School District to deny open enrollment to children who change the racial balance of the school district. Period," Madison Schools Superintendent Art Rainwater said.

However, Madison's approach now may be in jeopardy after a U.S. Supreme Court ruling in June sharply restricted school districts' power to use race in determining where children may attend school.

Madison officials say that because the district receives money through the state's voluntary school-integration program known as Chapter 220, they're required by state law to block student transfers that would increase the "racial imbalance" within the district. The Madison district receives about \$500,000 a year for participating.

The other districts participating in Chapter 220 are in Milwaukee, its suburbs, Beloit, Racine and Wausau. Each district sets its own criteria for what "racial imbalance" is and how to control it. None of the other Chapter 220 districts deny students' open enrollment transfer requests on the basis of race.

Under an internal policy developed by Rainwater and his staff to meet Chapter 220's integration goal, the district refuses to let white children transfer to other districts if their Madison school attendance areas already have a minority student population of more than 43 percent.

That figure is lower than the district's actual concentration of minority students, which last year stood at 46 percent.

There's little flexibility: The policy allows approval of transfers from the district's other areas if the departures of the white students increase the district's overall minority concentration no more than .04 percent and any single school's minority concentration by less than .5 percent.

Rainwater said the policy applies to children who aren't enrolled in a Madison school, such as children being home-schooled or attending private school, if they live within the district.

Asked what he would tell students and parents who consider the situation unjust, Rainwater replied, "Well, then they need to lobby the Legislature, it seems to me, because that's who makes the laws."

District figures show that for the current school year, 63 of the 140 transfer applications rejected for race-based reasons involved students such as Zachary who were not enrolled in a Madison public school.

The number of such rejections has nearly tripled since the 2004-05 school year, largely because of a rise in the number of requests to transfer to a virtual school in another district such as Appleton, Northern Ozaukee or Waukesha. (The Madison district offers more than 100 online courses for middle and high school students but hasn't determined whether to offer a full online school curriculum.)

For example, in the past four years, Madison officials have cited racial imbalance in rejecting more than half of the 59 requests to transfer to the Appleton School District, data show. Appleton operates a virtual school known as Wisconsin Connections Academy.

"Personally, to not allow students who are home schooled and who probably are going to be home schooled for the better part of their educational careers, that doesn't make a whole lot of sense to me," said Mark Huenink, assistant superintendent of the Appleton School District, who said it's likely that a change in the law will be considered by legislators as enrollment in virtual schools continues to climb.

"I don't know Madison's politics and the importance of that 43 percent and so on, but if you have a family that is not going to send its kids to Madison public schools, then that kid is not going to have an impact on the (classroom) balance....It does seem to perhaps negatively impact families who have no desire to send their kids to public schools right now."

Many families whose transfer requests have been denied by the Madison School District are drawing hope from a recent case in Dane County Circuit Court.

Jeff and Jennifer Cizek prevailed last month after taking the highly unusual step of filing a court action seeking to allow their daughter, Allison, to enroll in kindergarten in the Monona Grove School District, where Jennifer Cizek is an elementary teacher.

"It's just exactly what we wanted," said their lawyer, Daniel Krause, whose court papers argued that the case deserved a fresh review in light of the new U.S. Supreme Court ruling.

Spokesmen for DPI and the state Department of Justice, the agency representing DPI in court, decline to say why they agreed to settle the case in the Cizeks' favor, and Rainwater said he has no idea what happened.

Rainwater said the district won't change its policy or decisions unless the Legislature changes the law or a court declares the current Wisconsin law to be unconstitutional.

But two other Wisconsin districts, on Milwaukee's north side, dumped their race-based enrollment policies even before the nation's highest court issued its ruling.

"When I came on board, I said we're not doing any of this sort of thing,"

said Mary Dean, superintendent and principal of the Maple Dale-Indian Hill School District since the summer of 2006.

"If Caucasians want to leave, they've got as much right as anybody else."

For the 2006-07 school year, that district cited racial imbalance when it initially denied four requests to transfer to another district. But it then reversed those decisions, DPI records show.

The previous year, the district cited racial imbalance in denying 39 transfer requests.

Susan Landers, administrative assistant to Dean, said that the district's attorney "advised us not to apply the racial criteria as we awaited the Supreme Court decision," which struck down racial aspects of student assignment plans in Seattle and Louisville, Ky.

In the Glendale-River Hills School District, officials rejected 21 applications to transfer elsewhere for the 2005-06 school year.

Now, however, the district's enrollment policies are colorblind. There's a lottery for students wishing to come in, subject to space being available, and all requests to leave are granted.

"I'm not a lawyer, but my belief is the true meaning of the open enrollment system wasn't the color basis," Superintendent Larry Smalley said. "I don't think color should have been a factor."

Back in the Starks' home on Madison's East Side, Mike and Laura Starks worry that the race-based rulings from the Madison School District and DPI are harming Zachary's education.

They have a stack of papers from a six-month evaluation of Zachary, undertaken by the Madison School District to determine whether he qualifies for extra services as a special education student. He didn't meet the threshold, although there were signs of trouble.

A series of tests indicated that Zachary likely has attention deficit disorder.

A district psychologist noted that "at times Zach feels a sense of hopelessness as a student because he thinks he's going to fail no matter what he does."

As he begins seventh grade, though, Zachary is proud that in the past year of studies with his mother, he gained two years of academic progress.

That was crucial because at the beginning of last school year, as a sixth grader, he was operating at a third-grade level in several subject areas — vestiges of academic problems rooted in his early years of school in Montello.

Zachary and his parents believe he'd thrive in a virtual school, just as Daniel is through iQ Academies, a virtual school based 85 miles to the east in the Waukesha School District. Daniel gets lectures and support

from licensed teachers, plus a free computer and books.

With just one income, the family feels too pinched financially to afford the tuition to a virtual school or to mount a court challenge.

Mike Starks is employed part-time to run the computer system for the state Treasurer's Office, and Laura Starks is taking classes to become a nurse. She hopes to return to work after home-schooling Zachary this year.

But for this school year, at least, Zachary is consigned to sit at the kitchen table with his mother, while Daniel taps into a network of teachers and classmates at iQ Academies.

"HELLO PEEPS!" Daniel typed as he signed in for a get-acquainted session with principal Kristine Diener, other staff and 22 classmates on Tuesday, the beginning of the school year.

"Hi, DWalton," a student identified as Mallo P quickly replied.

Daniel will meet many of these classmates from all over Wisconsin throughout the year, as they gather for weekend events such as a picnic, bowling and even a prom.

In the kitchen, Zachary worked on fractions and adjectives. His mother guided him, using an online service (purchased by the family) to grade his papers. The family pays \$1,200 a year for his books.

"I feel I'm not giving him as much as what Daniel gets," Laura Starks said. "I'm certainly no professional teacher."

Zachary hopes that by telling his story publicly, he'll play a role in persuading policymakers to ban race as a reason why students can't get access to better learning opportunities.

"This," he said, "could change a lot of kids' lives."

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